IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 05-CV-00329-GKF-SAJ**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S RESPONSE TO THE CARGILL DEFENDANTS' MOTION FOR MODIFICATION OF SCHEDULING ORDER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, ("the State"), and responds to the Cargill Defendants' Motion for Modification of Scheduling Order [DKT #1297] as follows:[1]

1. The Scheduling Order should be modified, but not for the reasons advanced by the Cargill Defendants and not in the manner proposed by the Cargill Defendants.

2. Specifically, given the size and scope of this case and the difficulties the State has had in getting Defendants to comply with their discovery obligations,[2] the State agrees that it would be appropriate to modify the Scheduling Order, and proposes that that modification should be a short across-the-board eight-month extension of each of the deadlines set forth therein. The State, however, strenuously objects to the year-and-a-half delay in the trial date that the Cargill Defendants have proposed because it is unnecessary. It is Defendants, including the Cargill Defendants, who have delayed the progress of the case, not the State. Every month that Defendants, including the Cargill Defendants, are permitted to continue their obstructionist discovery tactics is another month that their unlawful conduct continues and another month that the degradation of the Illinois River Watershed, including the human health risks such degradation poses, goes unremedied.

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[1] The Cargill Defendants' Motion has been joined by the Tyson Defendants. *See* DKT #1289. The Cargill Defendants have not recited that the other Defendants oppose their Motion, so it must be assumed that they do not.

[2] With respect to the Cargill Defendants, for example and without limitation, they have not disclosed certain basic information in response to the State's discovery requests, have not provided their ESI in native format, and have not produced properly prepared 30(b)(6) designees.

3. Additionally, the State strenuously objects to the total reworking of the time structures set forth in the Scheduling Order proposed by the Cargill Defendants. The time structures set forth in the present Scheduling Order were the product of careful consideration by the Court. A rework of the time structures -- particularly of the sort being proposed by the Cargill Defendants -- is unnecessary and, moreover, one-sided in favor of Defendants.

Accordingly, the Cargill Defendants' Motion should be denied, and a modified Scheduling Order as proposed by the State, *see infra*, should be entered.

I. Legal Standard

Fed. R. Civ. P. 16(b) states that "[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge." "The 'good cause' standard primarily considers the diligence of the party seeking the amendment. The party seeking an extension must show that despite due diligence it could not have reasonably met the scheduled deadlines." *Deghand v. Wal-Mart Stores, Inc.*, 904 F. Supp. 1218, 1221 (D. Kan. 1995) (citations and quotations omitted); *see also Colorado Visionary Academy v. Medtronic, Inc.*, 194 F.R.D. 684, 687 (D. Colo. 2000) ("Properly construed, 'good cause' means that scheduling deadlines cannot be met despite a party's diligent efforts. In other words, this court may 'modify the schedule on a showing of good cause if [the deadline] cannot be met despite the diligence of the party seeking the extension'") (citation omitted). "Carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief." *Deghand*, 904 F. Supp. at 1221 (citation and quotations omitted)

II. Argument

A. While a short extension of the Scheduling Order deadlines is appropriate given the size and scope of the case and the delays of Defendants, including the Cargill Defendants, in complying with their discovery obligations, the trial should not be delayed a year-and-a-half

The Cargill Defendants advance four grounds for pushing back the dates in the Scheduling Order: (1) the size and scope of the case, (2) the delay in decisions on dispositive motions, (3) delays in discovery, and (4) Judge Frizzell's docket. *See* Cargill Defendants' Motion, pp. 2-15. While some (but not all) of these grounds support a short extension of the scheduling deadlines (though not for the reasons advanced by the Cargill Defendants), there is absolutely no basis for the year-and-a-half delay in the trial date that the Cargill Defendants have proposed.

1. Size and scope of the case

As to the first ground, this is indeed a big case. The unlawful conduct of Defendants has been pervasive throughout the Illinois River Watershed for many years. The injuries caused by their unlawful conduct are widespread and severe. And the remedies necessary to appropriately address these injuries will be wide-ranging and far-reaching. Marshalling the many pieces of evidence that the State will use to prove Defendants' liability for the harm to the Illinois River Watershed has proven to be a time-consuming process. Indeed, the State's efforts to marshal these pieces of evidence and complete its expert reports have been hindered by the Cargill Defendants' obstructionist litigation tactics, including, for example, their refusal to produce corporate knowledge documents without the State filing a motion to compel, their failure to produce properly prepared 30(b)(6) witnesses without the State filing a motion to compel, and

their refusal to produce ESI in native format without a motion to compel.[3] On the other hand, as demonstrated below, the State has fully complied with its discovery obligations, thereby enabling the Cargill Defendants to prepare their case in a timely manner. Merely stating that this is a big case is inadequate to justify the lengthy extension being requested by the Cargill Defendants.

2. The delay in decisions on dispositive motions

As to the second ground, the State disagrees that the delay in the Court's decisions on the dispositive motions provides a basis for extending the dates in the Scheduling Order. The fact of the matter is that Defendants' legal attacks on the State's case were almost entirely unsuccessful; the State's case survived Defendants' motions largely intact. *See* DKT #1186, 1187, 1202 & 1206. That Defendants opted not to prepare their case as aggressively as they might have while awaiting a resolution of their (unfounded) legal motions was, as it turns out, an unwise strategic decision, but not one for which the State should pay the price. *See Deghand*, 904 F. Supp. at 1221.

3. Delays in discovery

As to the third ground, while the Cargill Defendants attempt to nit-pick around the edges of the State's discovery efforts, the fact of the matter is that the State has made extraordinary efforts to provide the Cargill Defendants, as well as the other Defendants, all of the information to which they are rightfully entitled in a timely manner. Therefore, the Cargill Defendants' claim that they do not know the basis of the State's lawsuit is simply not credible. Rather, it is delays in Defendants' discovery responses, not the State's discovery responses, that necessitate a modification of the Scheduling Order.

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[3] The filing of these motions to compel has not addressed all of the State's outstanding discovery issues with the Cargill Defendants.

a. The State's document productions

Notwithstanding the Cargill Defendants' unfounded rhetoric to the contrary, the State has been conscientious and thorough in producing both hard copy documents and ESI materials that are responsive to Defendants' discovery requests. To date the State has produced more than one million pages of hard-copy documents and more than 175 gigabytes of ESI materials. Further, as the following chart reveals, the State's production of hard-copy documents and ESI materials has been completed or will be completed shortly.[4]

Agency	Hard Copy Production[5]	ESI Production
Oklahoma Department of Environmental Quality	Completed	Completed
Oklahoma Water Resources Board	Completed	Completed; One database being made available for inspection on-site
Oklahoma Conservation Commission	Completed	Completed; One database and non-e-mail ESI being made available for inspection on-site
Oklahoma Scenic Rivers Commission	Completed	Completed
Office of the Secretary of the Environment	Completed	Completed
Oklahoma Department of Agriculture, Food and Forestry	Scheduled to be completed by Oct. 26, 2007	Scheduled to be completed by Dec. 1, 2007
Oklahoma Department of Wildlife Conservation	Scheduled to be completed by Oct. 15, 2007	Scheduled to be completed by Oct. 15, 2007
Oklahoma Department of Tourism	Completed	Completed
Oklahoma Department of Mines	Scheduled to be completed by Dec. 1, 2007	Scheduled to be completed by Dec. 1, 2007

[4] The State will, of course, supplement its agency productions listed below if additional responsive information is subsequently identified. Further, the State is continuing to investigate and determine the ability to restore certain deleted e-mails from certain of the agencies and will meet-and-confer with Defendants when the State has completed its investigation.

[5] Included within the term "Hard Copy Production" is the production of documents that have been imaged and produced on disk.

Oklahoma Department of Health	Scheduled to be completed by Dec. 1, 2007	Scheduled to be completed by Dec. 1, 2007
Oklahoma Corporation Commission	Completed	Completed

b. The State's document indices

The Cargill Defendants' suggestion that the State's document indices have delayed the proceedings does not withstand scrutiny. *See* Cargill Defendants' Motion, p. 11. In response to the Court's order, the State, on July 16, 2007, provided the Cargill Defendants revised document indices that go above and beyond what the Court ordered. That the Cargill Defendants wish to feign ignorance about the relevance of certain designations on the revised indices vis-à-vis their discovery requests does not make the revised indices deficient. Indeed, the State submits that if they applied their time to actually using the information being provided by the State as opposed to coming up with purported complaints, the Cargill Defendants would have ample time to prepare their case.

c. The State's privilege logs

The Cargill Defendants suggest that alleged deficiencies in the State's privilege logs and allegedly improper privilege claims by the State have prolonged the discovery process. *See* Cargill Defendants' Motion, pp. 11-12. There has been no finding by the Court as to either of these allegations. The State is preparing a response to the allegations raised by Defendant Peterson Farms, Inc. on this matter. Suffice it to say, the State contests these allegations and will establish that they are without foundation.

d. The State's sampling data

The suggestion that alleged problems with the State's sampling data have delayed the proceedings is not credible. *See* Cargill Defendants' Motion, p. 12-13. Consistent with the

Court's January 5, 2007 Order [DKT #1016], the State has been regularly providing Defendants with the latest sampling data as it completes QA / QC and is made available for expert analysis by the State's experts.[6] It has also been providing non-privileged documents related to sampling data. The amount of materials that the State has provided has been voluminous -- some 100,000 pages. Some of the alleged "problems" raised by Defendants were, it has turned out, not problems at all: for example, Defendants already had the materials they thought were missing but had simply not reviewed the materials carefully enough, or the materials Defendants were seeking simply never existed, or Defendants were seeking information from the State to which they were not entitled (*e.g.*, work product analyses relating to the data). *See* Exhibit 1. In those isolated instances where a legitimate problem was identified in the State's voluminous production, the State has worked quickly to resolve the issue. *See* Exhibit 1. Simply put, the production of the State's sampling data has not delayed the proceedings. Rather, it has expedited the proceedings. Defendants are receiving the State's sampling data when it completes QA / QC and is made available for expert analysis by the State's experts. There is, and there has been, no reason for Defendants to delay their own scientific investigation and analysis and accompanying case preparation.

e. The State's interrogatory responses

The Cargill Defendants assert that the State has not been forthcoming in its interrogatory responses "to threshold questions." *See* Cargill Defendants' Motion, p. 13. The Cargill Defendants are wrong. The State, as explained in "Response of State of Oklahoma to Motion for Sanctions of the Cargill Defendants," [DKT #1272] and at the September 27, 2007 hearing, has provided an exhaustive and detailed description of the basis of its claims against the Cargill

[6] Once it completed development of a method for using DNA to track bacteria from poultry waste, the State began production of that data in September, 2007.

Defendants. And the Court, at the September 27, 2007 hearing, found the State's answers to Interrogatory Nos. 9 & 13 regarding its circumstantial case to be responsive and sufficient. *See* Sept. 27, 2007 Transcript, 61:21-62:4. The Cargill Defendants have had the information contained in these answers since June 1, 2007. That the Cargill Defendants chose to waste their (and the State's) time filing a meritless motion for sanctions, rather than applying the information contained in the State's answers to case preparation reflects a poor strategic decision, but not a basis for extending the Cargill Defendants' expert disclosure deadlines.

f. Other discovery matters

The Cargill Defendants' suggestion that the State's motions for reconsideration have delayed the proceedings is a red-herring and, in any event, one of the State's motions for reconsideration was granted in part, *see* DKT #1118, and another of the State's motions, while denied, resulted in a needed clarification. *See* DKT #1207. Such rulings have provided valuable guidance as to the parties' discovery obligations, thereby eliminating confusion and expediting the discovery process.

Likewise, the Cargill Defendants' suggestion that the State's effort to have the Cargill Defendants coordinate their 30(b)(6) deposition discovery of the State with the other Defendants has delayed the proceedings is without merit. Coordinated discovery will obviously expedite the progress of the case, not delay it.[7]

g. Defendants', including the Cargill Defendants', obstructionist discovery tactics have interfered with the State's preparation of its case

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[7] *See* State of Oklahoma's Response in Opposition to the Cargill Defendants' Motion to Compel the State to Designate Deponents under Rule 30(b)(6) [DKT # 1308] & State of Oklahoma's Motion for Protective Order Regarding the Conduct of 30(b)(6) Depositions of the State and Integrated Brief in Support Thereof [DKT #1309].

If either side has been obstructionist in discovery, it has been Defendants, including the Cargill Defendants.[8] By way of example, the State has had to bring motions to compel against the Cargill Defendants regarding: (1) the Cargill Defendants' failure to produce a knowledgeable records custodian for deposition, *see* DKT #1155, (2) the Cargill Defendants' refusal to provide discovery materials outside the Illinois River Watershed pertaining to their corporate knowledge of the environmental detriment of poultry waste and its constituents, *see* DKT #1120, (3) the Cargill Defendants' refusal to produce a fully-prepared 30(b)(6) designee on core topics in this lawsuit, *see* DKT #1244, and (4) the Cargill Defendants' failure to produce ESI in native format, *see* DKT #1271 (converted to motion to compel at September 27, 2007 hearing). Indeed, the State is still seeking from the Cargill Defendants such basic information as the number of birds raised on an annual basis by the Cargill Defendants in the Illinois River Watershed, and the amount of waste generated annually by those birds. That the Cargill Defendants have still failed to disclose this basic information to the State is inexplicable, and has severely prejudiced the State in its trial preparation. Moreover, further interfering with the State's trial preparation is the Cargill Defendants' stubborn refusal to admit such basic facts as that poultry waste from their growing operations that has been spread on land within the Illinois River Watershed has run off into the waters of the State, that pathogens in poultry waste from their growing operations that has been spread on land within the Illinois River Watershed has run off into the waters of the State, and that phosphorus in poultry waste from their growing operations that has been spread

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[8] For the reasons outlined above, the assertions by the Cargill Defendants that "many of Plaintiffs' [sic] responses to Defendants' various discovery efforts have been incomplete, incremental, or delayed, often for months" and that "[i]n extreme instances, Plaintiffs [sic] have essentially refused to respond to discovery at all," *see* Cargill Defendants' Motion, p. 15, lack foundation.

on land within the Illinois River Watershed has run-off into the waters of the State. *See, e.g.,* Exhibit 2 (Cargill, Inc.'s Responses to Requests to Admit Nos. 5, 6, 8 & 9).

4. The Court's docket

As to the fourth ground, the State is cognizant of the heavy caseload borne by both the District Court Judge and the Magistrate Judge assigned to this action. However, the Court has not expressed to the parties that a delay of the magnitude requested by the Cargill Defendants is appropriate in light of its schedule.

5. The Cargill Defendants have the information they need to select and prepare their experts

The Cargill Defendants assert that they "have been unable to obtain much of the information critical to selecting experts, much less to preparing and disclosing their reports," *see* Cargill Defendants' Motion, p. 16 (emphasis in original), and that they "can only guess at what experts they will need to retain or the data and the opinions those experts will have to rebut." *See* Cargill Defendants' Motion, p. 17. Such assertions lack any credibility whatsoever. The Cargill Defendants have -- and have long had -- ample information to enable them to select and prepare their experts.

First, the State's Second Amended Complaint, DKT #1215, provides a detailed, fact-rich 36-page, 146-paragraph narrative of the conduct by the Cargill Defendants that gives rise to the State's claims. In fact, the conduct described in the Second Amended Complaint is very similar to the conduct that gave rise to the *City of Tulsa* lawsuit in which Cargill, Inc. was a defendant (and in which the defendants selected, prepared and disclosed those experts they thought appropriate). The problem of poultry waste run-off has also been extensively documented in reports and the literature, *see, e.g.,* DKT #978 (Exhibits 7-13), the poultry industry's own

documents, *see, e.g.,* DKT #1249 (Exhibit 3, Peterson's Poultry Water Quality Handbook), and at symposia, *see, e.g.,* DKT #1249 (Exhibit 4).

Second, the State has responded to some 144 interrogatories, 251 requests for admission, and 383 requests for production pertaining to issues in this case. As noted above, in connection with its responses to the requests for production, the State has produced more than one million pages of hard-copy documents and more than 175 gigabytes of ESI. The State has also made a comprehensive Rule 26(a) disclosure.

Third, the State has provided the Cargill Defendants an extraordinarily detailed roadmap of how it intends to prove its case. *See* DKT # 1272 (Exhibit 3, State's Response to Interrogatory Nos. 9 & 13).

Fourth, in addition to the data contained in the document production described above, the State has produced to Defendants its own sampling data as such data completes QA / QC and is made available for expert analysis by the State's experts. To date, some 100,000 pages of sampling data and related information have been turned over. By providing Defendants such data and related information, Defendants, including the Cargill Defendants, can provide it to their experts for analysis contemporaneously with the State.

Thus, contrary to the Cargill Defendants' suggestion, the facts and theories of the State's case are not, and have never been, hidden. The Cargill Defendants' "bury-their-head-in-the-sand" approach to this case should not be countenanced by this Court. They know what this case is about and they have the information they have requested; for the Cargill Defendants to argue otherwise is extraordinarily disingenuous. Simply put, if the Cargill Defendants have not selected and prepared their experts, it is no fault of the State. *See, e.g., Deghand*, 904 F. Supp. at

1221 ("Carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief").

6. A year-and-a-half delay in the trial is wholly unwarranted

The Cargill Defendants seek to modify the Scheduling Order to push the trial date back from January 2009 to July 2010. The Cargill Defendants have articulated no sound basis for such a delay. Indeed, such a delay not only is unnecessary under the circumstances, but also would severely prejudice the State. With each passing month, Defendants continue to pollute the Illinois River Watershed with poultry waste. The endangerment to the environment and the public health is substantial and imminent.

7. An eight-month across-the-board extension of the deadlines in the Scheduling Order would be appropriate

Despite the diligence with which the State has been preparing its case,[9] due to the size of this case, the massive amounts of scientific data involved, the nature of the expert proofs, and the difficulties the State has had in getting Defendants, including the Cargill Defendants, to comply with their discovery obligations (as described above), the State anticipates it will need additional time to prepare both its non-relief-related expert disclosures and its relief-related expert disclosures,[10] and that accordingly, the Scheduling Order should be modified to reflect an across-

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[9] The State has been diligently working with many of its experts for more than two years.

[10] The language of the current scheduling order is ambiguous in the manner in which it distinguishes between expert reports on matters pertaining to relief versus expert reports pertaining to all other matters besides relief. The State wrote to Defendants on September 20, 2007, expressing its interpretation of the current Scheduling Order on this issue. *See* Exhibit 3. None of the Defendants responded. Accordingly, in any modification of the Scheduling Order, the State requests that the language be clarified to use the terms "Relief-Related Experts" and "Non-Relief-Related Experts." The State has, accordingly, redlined this clarifying change on the "Events" set out in the table above.

the-board eight-month extension of each of the deadlines set forth therein.[11] The following table reflects such an extension:

Event	Date Under Original Scheduling Order	State's Proposed New Date
Plaintiff's Experts Reports on injury and causation and all other issues except ~~damages~~ relief	December 3, 2007	August 4, 2008
Defendants' Expert Reports on all issues except for ~~damages~~ relief	February 1, 2008	October 1, 2008
Exchange of final fact witness lists	May 1, 2008	January 5, 2009
Plaintiff's expert report on ~~damages~~ relief	May 1, 2008	January 5, 2009
Defendants' expert report on ~~damages~~ relief	June 1, 2008	February 2, 2009
Discovery Cut-Off	July 1, 2008	March 2, 2009
Dispositive Motion deadline	August 1, 2008	April 2, 2009
Exchange of exhibits and deposition designations	October 1, 2008	June 1, 2009
Proposed jury instructions	November 3, 2008	July 6, 2009
Motions in limine	November 3, 2008	July 6, 2009
Pretrial briefs (if necessary)	November 3, 2008	July 6, 2009
Trial	January 2009	September 2009

B. The time structure of the original Scheduling Order should not be reworked

The Cargill Defendants have proposed expanding the time between the designation of the State's non-relief-related experts and Defendants' non-relief-related experts from two months to an entire year, and expanding the time between the designation of the State's relief-related experts and Defendants' relief-related experts from one month to nine months. The Cargill Defendants' proposal is, as explained below, unwarranted and would result in unnecessary delay.

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[11] The State is continuing to review evidence demonstrating an imminent and substantial threat to human health from Defendants' conduct in consideration of filing a motion for preliminary injunction. As noted by the Court in its original Scheduling Order, "the Court can address any adjustments to the scheduling order necessitated thereby at that time." *See* DKT #1075, p. 2.

The Cargill Defendants advance five arguments for expanding the time-frames of the Scheduling Order. First, the Cargill Defendants assert that discovery delays "have severely hampered the Cargill Defendants' efforts even to identify the areas in which they will need expert testimony, much less to actually retain experts and direct their work." Cargill Defendants' Motion, p. 18. For the reasons explained above, the premise of this assertion is wrong; the State has made extraordinary efforts to provide the Cargill Defendants, as well as the other Defendants, all of the discovery information to which they are rightfully entitled in a timely manner. Moreover, the suggestion that the Cargill Defendants are in the dark about which kinds of experts to retain and how to prepare them is simply not believable. The Cargill Defendants faced similar facts and legal theories in the *City of Tulsa* case. The original Scheduling Order contemplated that the Cargill Defendants would retain and begin working with their experts before the State made its expert disclosures. That the Cargill Defendants, despite being able to, have apparently failed to do so is not the fault of the State, and this failure to do so provides no justification for reworking the time-frames of the original Scheduling Order. *See, e.g., Deghand*, 904 F. Supp. at 1221 ("Carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief").

As a second argument for reworking the time-frames of the original Scheduling Order, the Cargill Defendants point to the fact that the State is continuing to do sampling, and that they "will have to wait months to receive copies of Plaintiffs' [sic] data from that sampling." Cargill Defendants' Motion, p. 19. The fact of the matter, as noted above, is that as sampling data completes QA / QC, the State has promptly made that data available to Defendants. The State will, of course, continue to do so. Thus, this assertion by the Cargill Defendants provides no support for their argument that the time-frames should be reworked.

As to the third argument, the Cargill Defendants assert that they will need additional time to answer the various methods by which the State will establish that Defendants, including the Cargill Defendants, are liable. *See* Cargill Defendants' Motion, p. 19. The Cargill Defendants have long been on notice that these methods are the manner in which the State intends to proceed. These methods are not novel. As noted above, the original Scheduling Order contemplated that the Cargill Defendants would retain and begin working with their experts before the State made its expert disclosures. That the Cargill Defendants have not done so is not a justification for delay. *See, e.g., Deghand*, 904 F. Supp. at 1221.

As to the Cargill Defendants' fourth argument -- that the State is pursuing a "new expert theory," *see* Cargill Defendants' Motion, p. 20 -- it is without foundation. What the Cargill Defendants are apparently referring to is the State's development of a method to use DNA technology to identify poultry bacteria, which was disclosed to Defendants in March, 2007. The use of DNA technology to identify bacteria is not a novel technique or "new expert theory." Rather, as pertains here, it is merely the new application of an established technique. Moreover, it is important to note that the State began producing to Defendants data pertaining to the application of this established technique to poultry in September 2007. Thus, the State's use of DNA technology provides no basis for the year-long expansion of the expert disclosure time-frame being proposed by the Cargill Defendants.

Fifth and finally, the Cargill Defendants assert that they will need additional time to do their own sampling in response to the State's sampling, and that this justifies expanding the time-frames between expert disclosures. The Cargill Defendants' assertion ignores the fact that since the beginning of this year they have been receiving copies of the State's sampling data. Had they wanted to do their own sampling, they have had ample time and opportunity to do so. The

Cargill Defendants' failure to do so does not provide a justification for delay. *See, e.g., Deghand*, 904 F. Supp. at 1221.

In sum, the expansive expert disclosure time-frames being proposed by the Cargill Defendants are unwarranted. Indeed, they are unprecedented. Under the present Scheduling Order, Defendants have two months from the State's disclosure of its non-relief-related experts to make their non-relief-related expert disclosures, and one month from the State's disclosure of its relief-related experts to make their relief-related expert disclosures. Given the Cargill Defendants' familiarity with the issues raised by this case and their full access to discovery materials, the time-frame structure of the original Scheduling Order is entirely appropriate. After all, as the Cargill Defendants admit, "[t]he original Scheduling Order necessarily contemplated that the Defendants would retain and begin working with their experts before Plaintiffs [sic] made their [sic] expert disclosures." Cargill Defendants' Motion, p. 18. In fact, it bears noting that under the scheduling order entered in the *City of Tulsa* case, there was less than a month between the plaintiff's expert disclosures and the defendants' expert disclosure. *See* Exhibit 4, §§ A.3a & A.3b. Diligent work by the Cargill Defendants should allow it to comply with the more generous time-frames that exist under the original Scheduling Order that has been entered in this case.

WHEREFORE, premises considered, this Court should deny the modification requested by the Cargill Defendants in their Motion for Modification of Scheduling Order [DKT #1297], and enter the modified Scheduling Order proposed by the State above.

Respectfully Submitted,

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